

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TERRELL LEE EMBRY #276468,

Petitioner,

Hon. Wendell A. Miles

v.

Case No. 1:02-cv-361

KURT JONES,

Respondent.

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**ORDER**

This matter is before the Court on Petitioner's Motion for Certificate of Appealability. (Dkt. 35). Petitioner appeals the denial of his writ of habeas corpus. (Dkt. 33). As discussed below, Petitioner's motion is **denied**.

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a petitioner may not appeal in a habeas corpus case unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). The Federal Rules of Appellate Procedure extend to district judges the authority to issue certificates of appealability. Fed. R. App. P. 22(b); *see also, Castro v. United States*, 310 F.3d 900, 901-02 (6th Cir. 2002) (the district judge "must issue or deny a [certificate of appealability] if an applicant files a notice of appeal pursuant to the explicit requirements of Federal Rule of Appellate Procedure 22(b)(1)"). However, a certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

To obtain a certificate of appealability, Petitioner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."

*Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

While Petitioner is not required to establish that “some jurists would grant the petition for habeas corpus,” he “must prove ‘something more than an absence of frivolity’ or the existence of mere ‘good faith.’” *Miller-El*, 537 U.S. at 338 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

Applying this standard, the Court concludes that Petitioner is not entitled to issuance of a certificate. The basis for the Court’s denial of Petitioner’s petition for writ of habeas corpus is well reasoned and consistent with applicable legal standards. Petitioner has not made a showing, substantial or otherwise, that he has been denied a constitutional right. The Court can discern no good faith basis for appeal; consequently, any appeal would be frivolous. Therefore, **IT IS ORDERED** Petitioner is **DENIED** a certificate of appealability.

Dated: December 30, 2005

/s/ Wendell A. Miles  
Wendell A. Miles  
Senior U.S. District Judge